

CL 44-3760

IN THE IOWA DISTRICT COURT FOR CASS COUNTY

NO. CVCV23845
2016

2010 DEC 10 AM 11:03

CLERK OF DISTRICT COURT
CASS COUNTY, IOWA

VS

THE CASS COUNTY BOARD
OF REVIEW, and PROPERTY
ASSESSMENT APPEAL BOARD.

ORDER

Respondent/Appellee.

This matter comes before the Court on petition for judicial review of a final decision of the Property Assessment Appeal Board pursuant to Iowa Code Section 17A.19. Oral arguments were heard on September 27, 2010, in Cass County, Iowa. Terrance Rutherford appeared for petitioner TEMICA, L.C. (TEMICA), and Curtis Swain appeared on behalf of the Property Assessment Appeal Board (PAAB).

PROCEDURAL HISTORY

On January 28, 2009, a contested case was heard before the Property Assessment Appeal Board. By its decision entered April 14, 2009, the Property Assessment Appeal Board affirmed the decision of the Cass County Board of Review finding an assessed value of the subject property to be \$179,585.00. TEMICA seeks judicial review of the PAAB decision entered April 14, 2010. TEMICA has exhausted all administrative remedies and petition for judicial review has been properly brought before this Court.

STANDARD OF REVIEW

The District Court acts in an appellate capacity when reviewing petitions for judicial review of administrative agency decisions. In examining the actions of the agency, the Court's scope of review is at law and is limited to those issues considered in the record. The burden of demonstrating the validity of agency action is on the party asserting invalidity, and it is, thus, TEMICA's burden to demonstrate grounds for the reversal or for other relief from the PAAB's final decision.

When exercising judicial review of administrative decisions, a reviewing Court may affirm, reverse, modify or grant other appropriate relief of agency action. Iowa Code Section 17A.19 (10).

FACTS

The TEMICA property that is the subject of this proceeding is located at 2410 E. Seventh Street, Atlantic, IA and was assessed as commercial property at an amount of \$157,531.00 for the initial January 1, 2007, assessment. In October, 2007, the Iowa Department of Revenue issued a 14 percent equalization order for all commercial property in Cass County. The equalization order increased the subject property's assessment to \$179,585.00. TEMICA protested the increase to the Cass County Board of Review asserting that the application of the equalization order caused the property to be assessed for more than market value. Following an inspection of the property and an oral hearing, the Cass County Board of Review denied TEMICA's petition. An evidentiary hearing was heard on January 28, 2009, before the PAAB, which reviewed the Cass County Board of Review decision de novo. Terrance Rutherford appeared on behalf of and testified for TEMICA. The Cass County Assessor, Brenda Nelson, also testified before the PAAB.

The area of the subject site is 1.74 acres and is improved with TEMICA's two-story office building used for a law office. TEMICA's site includes a 720 square foot garage, 5500 square feet of concrete parking and 4200 square feet of asphalt parking. The office building was originally built in 1982 and was remodeled in 2002. Mr. Rutherford, as one of the limited partners of TEMICA, testified that the property was purchased in 2004 for \$157,000.00, and since the purchase there has been very little in the way of improvements to the property. The assessment at the time of purchase was \$127,970.00 and increased to \$128,928.00 for 2005, to \$150,846.00 for 2006, to \$157,531.00 for 2007, and to \$179,585.00 as a result of the 2007 equalization order. Mr. Rutherford also testified at the hearing that he believed the current actual market value of the subject property was \$150,000.00.

TEMICA submitted evidence concerning four properties that it believed were comparable in value. Mr. Rutherford testified the assessed values of these comparable properties ranged from \$29.99 per square foot to \$149.00 per square foot. TEMICA's property results in an assessed value of \$118.77. The PAAB found the comparables cited by TEMICA did not provide competent evidence of the market value of the subject property. The Board based its finding on a number of factors, including a review of the square foot assessments of the comparables could not be reconciled with the assessments shown on the property record cards. In addition, the

Board found TEMICA failed to provide any adjustments for location, gross building area, grade and site improvements.

Cass County Assessor, Brenda Nelson's testimony was based almost exclusively on the notes shown on the subject property record card. She testified she did not inspect the TEMICA property in response to the petition filed before the Cass County Board of Review or in preparation for the hearing before PAAB. Ms. Nelson testified that she believed commercial values in Cass County had increased as evidenced by the necessity of the Department of Revenue to issue a percent equalization order. Rather than stratify the equalization order throughout the county, Ms. Nelson applied the equalization order across all commercial properties in Cass County. Finally and most troubling for this court was Ms. Nelson's contention that the assessment for the TEMICA property is low based on a 2004 purchase of 25 acres by Wal-Mart for \$825,000.00 and a listing price of \$266,000.00 for a 7.6 acre vacant lot. She acknowledged use of a listing was not a typical indicator of market value, especially when the property had been on the market for a number of years.

DISCUSSION AND ANALYSIS

TEMICA raises three issues to be resolved by the Court: 1) that the findings and conclusions of the PAAB final decision are not supported by substantial evidence in the record; 2) that the PAAB decision is based upon an irrational, illogical or wholly unjustifiable application of the law to the facts of this case; and 3) that the PAAB decision is otherwise unreasonable, arbitrary, capricious or an abuse of discretion.

Iowa Code Section 17A.19(10)(f) defines substantial evidence as the type of evidence deemed sufficient by a reasonable person to establish the fact at issue. This definition is similar to the definition applied by the Iowa Supreme Court in *City of Davenport v. Public Employment Relations Board*, 264 N.W. 2d 307, 311 (Iowa 1978) and subsequent decisions reviewing agency action. This does not mean that only one conclusion can be drawn from the evidence. Indeed, the possibility of two inconsistent conclusions does not prevent an administrative agency's decision from being supported by substantial evidence. *Id.* Thus, this court must determine whether a reasonable person could conclude that there is sufficient evidence to support the assessed value of the property.

The Court is troubled by the Cass County Assessor's lack of independent knowledge concerning TEMICA's property. The Court also questions the applicability of the Super Wal-

Mart property and the listing price for a large vacant lot to serve as comparables in this instance. However, the best known fact of the case is that the market value in 2004 was \$157,000.00 based upon the sales price that TEMICA paid for the property. Ms. Nelson testified that she believed commercial property had increased in value from 2004 through 2007. The Iowa Department of Revenue issued a 14 percent equalization order applicable to Cass County and that order was not challenged. This evidence coupled with the information on the property card is sufficient evidence to support the assessed value of the property.

While this Court would have likely reached a different conclusion concerning market value of the subject property, there is substantial evidence in the record taken as a whole to support PAAB's findings and conclusions. Similarly, and based upon the same analysis, the Board's decision is not illogical, nor does it rise to the level of arbitrary and capricious.

This Court is left to ponder why TEMICA did not protest the initial 2007 assessment or have the property appraised and also why the Cass County Assessor did not protest the equalization order. However, with respect to the task at hand, this Court finds that TEMICA has failed to carry its burden to demonstrate the PAAB's decision is not supported by substantial evidence; based upon irrational, illogical or wholly and unjustifiable application of the law; or is otherwise unreasonable, arbitrary and capricious.

For all these reasons, the petition is denied.

DECISION

The Property Assessment Appeal Board in Docket No. 07E-15-0889, TEMICA L.C., Appellant, is affirmed.

DATED this 6th day of December, 2010.



RICHARD H. DAVIDSON
DISTRICT COURT JUDGE

12/13/10
Cto: TGR TJB MBR CCB/R